

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations )

(Thorndale, Texas) )

MM Docket No. 99-243

RM-9675

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**OPPOSITION TO MOTION FOR STAY OF  
PROCEEDING**

Houston Christian Broadcasters, Inc., (hereafter "HCBI") by its undersigned counsel, hereby respectfully submits this opposition to the "Motion For Stay of Proceeding" (hereafter the "Motion") filed on August 2, 1999 by Mr. Roy Henderson d/b/a Cameron Broadcasting Company (hereafter "Henderson"). For the reasons noted herein, the Henderson Motion should be summarily denied.

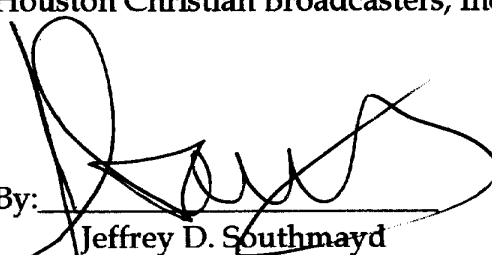
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Respectfully submitted,

Houston Christian Broadcasters, Inc.

By:



Jeffrey D. Southmayd

Its Attorney

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(202) 331-4100

Date: August 9, 1999

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<sup>2</sup> 259 F. 2d 921 (D.C. Cir. 1958).

## CERTIFICATE OF SERVICE

I, Jeffrey D. Southmayd, do hereby certify that I have caused a copy of the foregoing to be served by first class United States mail, postage pre-paid, on the following on this 9th day of August, 1999.

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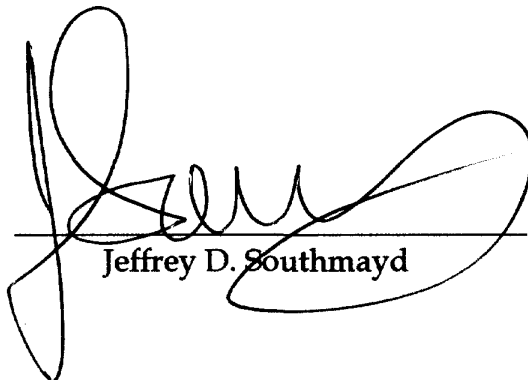
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Jeffrey D. Southmayd

**I. HENDERSON HAS FAILED TO DEMONSTRATE THAT THE ISSUANCE OF THE NOTICE AND THE CONTINUANCE OF THE RULE MAKING PROCESS WILL IN ANY WAY PREJUDICE HIS RIGHTS OR CAUSE HIM ANY HARM WHATSOEVER.**

1. The action for which Henderson seeks a stay involves the issuance of a Notice of Proposed Rule Making (hereafter the "Notice") in the above-captioned docket.<sup>1</sup> That Notice established August 23, 1999 as the deadline for the submission of comments on the proposal by HCBI to assign FM channel 286A to Thorndale, Texas, and to reserve that channel for noncommercial, educational use. By issuing that Notice, and commencing the rule making process, the Commission has not taken any action adverse to any party, including Henderson. Rather, the Commission is preliminarily seeking public comment on the Thorndale noncommercial FM channel proposal that was requested by HCBI, and is according interested parties, such as Henderson, the opportunity to submit comments thereon.

2. In the event that Henderson or any other party believes that the Thorndale noncommercial FM assignment does not serve the public interest, or is in conflict with some private right they may possess, they may file comments by the deadline and express those misgivings in the context of the rule making. The Commission within the context of the rule making proceeding will then consider such comments and render a decision on the matter. However, by issuing the Notice the Commission has not made a definitive decision on the efficacy of the

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<sup>1</sup> DA 99-1292, released July 2, 1999.

proposed Thorndale noncommercial FM allocation, and has not in any way prejudiced the rights of Henderson or anyone else in submitting such comments in opposition to that proposal.

3. Simply stated, in issuing the Notice the Commission has not taken any “final action” that will cause harm to Henderson or anyone else. The legal standard established for a stay in Virginia Petroleum Jobbers Association v. Federal Power Commission<sup>2</sup> relates to final actions taken by a federal regulatory agency that will result in irreparable harm to the petitioner. In the case at hand, the issuance of the Notice is not a final action and, thus, inherently will not result in harm to Henderson. Rather, the issuance of the Notice is merely the preliminary notification of a proposed regulatory action that is subject to public comment and final Commission review and disposition based on such public comment. The preliminary action of the Commission in issuing the Notice does not rise to the level of administrative “finality” that will allow for the issuance of a stay under the Virginia Petroleum Jobbers standard.

Accordingly, HCBI respectfully submits that the Henderson Motion should be summarily denied in favor of proceeding forward with the above-captioned rule making. Such an action will not prejudice the rights of Henderson to make such a showing as he may deem appropriate in opposition to the Thorndale FM allotment proposal by HCBI.